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 Receivable Fund, LP*

**IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE DISTRICT OF NEVADA**

In re:
 INFINITY CAPITAL MANAGEMENT,
 INC.,
 Debtor.

Case No. 21-14486-abl

Chapter 7

HASELECT-MEDICAL RECEIVABLES
 LITIGATION FINANCE FUND
 INTERNATIONAL SP,
 Plaintiff,

Adversary Case No. 21-01167-abl

v.
 TECUMSEH–INFINITY MEDICAL
 RECEIVABLES FUND, LP,
 Defendant.

**TECUMSEH–INFINITY MEDICAL
 RECEIVABLE FUND, LP’S
 STATEMENT OF UNDISPUTED FACTS
 IN SUPPORT OF MOTION FOR
 PARTIAL SUMMARY JUDGMENT AS
 TO DIRECT PURCHASE
 RECEIVABLES**

TECUMSEH–INFINITY MEDICAL
 RECEIVABLES FUND, LP,
 Counter-Claimant,

Hearing Requested

v.
 HASELECT-MEDICAL RECEIVABLES
 LITIGATION FINANCE FUND
 INTERNATIONAL SP,
 Counter-Defendant.

HASELECT-MEDICAL RECEIVABLES
LITIGATION FINANCE FUND
INTERNATIONAL SP,

Counter-Claimant,

v.

TECUMSEH-INFINITY MEDICAL
RECEIVABLES FUND, LP,

Counter-Defendant.

Pursuant to LR 7056, Defendant and Counterclaimant Tecumseh–Infinity Medical Receivable Fund, LP (“**Tecumseh**”) respectfully submits the following statement of undisputed facts in support of its *Motion for Partial Summary Judgment as to Direct Purchase Receivables* (the “**Motion**”) [ECF No. 90].

	TECUMSEH’S UNDISPUTED FACTS AND SUPPORTING EVIDENCE	HASELECT’S RESPONSE AND SUPPORTING EVIDENCE
	<p>The Debtor was in the business of purchasing receivables from medical providers, which receivables typically arose from medical treatment provided to individuals who were injured in accidents (the “Plaintiff(s)”) who then asserted personal injury claims arising from the accidents (the “Receivables”).</p> <p>Both volumes of Rule 2004 Transcript of Oliver Hemmer’s testimony are attached hereto as Exhibit A, (“Hemmer Dep. Vol.”);</p> <p><i>See</i> Exhibit A, Hemmer Dep. Vol. I at 42:1-46:15; Vol. II at 175:7-179:3.</p>	
	<p>The Receivables were secured by liens against recovery on the personal injury claims; the Debtor only recovered on its Receivables</p>	

1	when Plaintiff's personal injury claims were settled.	
2		
3	<i>See</i> Exhibit A, Hemmer Dep. Vol. II at 44:20-47:3; Hemmer Dep. Vol. II at 176:8; Hemmer Dep. Vol. II at 180:4-183:8.	
4		
5	The Debtor used proceeds of its loan from HASElect to purchase Receivables on its own account and to fund its operations.	
6		
7	<i>See</i> Exhibit A, Hemmer Dep. Vol. I at 108:12-109:1.	
8		
9	Among other things, those Receivables legally and beneficially owned by the Debtor secured the HASElect loan.	
10		
11	<i>See</i> Exhibit A, Hemmer Dep. Vol. 108:12-109:1; Hemmer Dep. Vol. II at 168:17-169:5.	
12		
13	HASElect asserts that is owed \$16,000,543.00 as of September 14, 2021.	
14		
15	<i>See</i> Main Case, Proof of Claim No. 8-2.	
16		
17	On October 15, 2021, the Trustee abandoned to HASElect collateral valued by the Debtor at approximately 10 million dollars.	
18		
19	<i>See</i> Main Case, ECF Nos. 12, 64, and 97.	
20		
21	This Court has ruled that HASElect may also recover receivables totaling \$3,734,397.25, and concluded that HASElect's position as a "lien creditor" under 11 U.S.C. § 544(a) was superior to any interest held by Tecumseh in those particular Receivables, and therefore, that any interest held by Tecumseh in such receivables was avoided pursuant to 11 U.S.C. § 544(a)	
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1		<i>See</i> Adv. Case, ECF No. 88.	
2		The relationship between Tecumseh	
3		and the Debtor was governed by a	
4		June 2020 Sub-Advisory	
5		Agreement (the “Sub-Advisory	
6		Agreement”).	
7		<i>See</i> Declaration of Michael Belotz	
8		(the “Belotz Declaration”) ¶ 5,	
9		submitted herewith; <i>see also</i> Sub-	
10		Advisory Agreement attached	
11		hereto as Exhibit B .	
12		The Sub-Advisory Agreement	
13		generally provided that the Debtor	
14		would (i) assist Tecumseh with	
15		purchasing the Tecumseh	
16		Receivables “directly from the	
17		Medical Service Provider” and (ii)	
18		service and collect the Tecumseh	
19		Receivables.	
20		<i>See</i> Exhibit B, Sub-Advisory	
21		Agreement, ¶ 3(b), (e); Belotz Decl.	
22		at ¶ 7.	
23		The Sub-Advisory Agreement	
24		called for the Debtor to identify	
25		receivables for Tecumseh to	
26		purchase and to negotiate a	
27		purchase price on Tecumseh’s	
28		behalf.	
		<i>See</i> Exhibit B, Sub-Advisory	
		Agreement at ¶¶ 1(b), 3(a), 3(b).	
		The Debtor was also to arrange all	
		of the paperwork necessary to	
		“evidence the sale of the	
		Receivable to [Tecumseh] by the	
		Medical Service Provider.”	
		<i>See</i> Exhibit B, Sub-Advisory	
		Agreement at ¶ 3(d).	
		FTM Investments, Inc. (“FTM”)	
		would verify the receivable on	
		behalf of Tecumseh, after which	
		Tecumseh would the approve of the	
		purchase.	

1		<i>See Belotz Decl., ¶ 10.</i>	
2		Tecumseh then paid the price	
3		agreed to by the medical provider	
4		along with the fee to the Debtor	
5		required by the Sub-Advisory	
6		Agreement.	
7		<i>See Belotz Decl., ¶ 10.</i>	
8		The process of purchasing a	
9		receivable began with a personal	
10		injury plaintiff being referred to the	
11		Debtor.	
12		<i>See Referral, attached hereto as</i>	
13		Exhibit C.	
14		Each plaintiff was then assigned a	
15		unique ClaimID number by the	
16		Debtor.	
17		<i>See Exhibit A, Hemmer Dep. Vol. I</i>	
18		<i>at 45:15-46:23.</i>	
19		Acting on behalf of Tecumseh,	
20		Debtor would provide a	
21		preauthorization letter to the	
22		medical provider prior to the	
23		performance of any authorized	
24		service by the provider to the	
25		Plaintiff.	
26		<i>See Preauthorization Letter,</i>	
27		<i>attached hereto as Exhibit D.</i>	
28		Subsequent to the provision of an	
		authorized procedure, Tecumseh	
		would provide payment in a	
		previously agreed upon amount.	
		<i>See Belotz Decl., ¶ 9-10.</i>	
		The Debtor retained in its records	
		an HCFA 1500 medical billing	
		claim form (the "Claim Form")	
		reflecting, among other things, the	
		face amount of each Receivable,	
		and transmitting the Claim Form to	
		the Plaintiff's counsel of record.	
		<i>See Claim Form, attached hereto as</i>	
		Exhibit E.	

1	Each Claim Form represented a distinct Receivable, affiliated with a unique BillID number.	
2		
3	<i>See Exhibit A, Hemmer Dep. Vol. I at 45:15-46:23.</i>	
4		
5	Each receivable would receive its own unique BillID number, and the Debtor would maintain in its records a corresponding Claim Form, together with evidence of Tecumseh's contemporaneous payment.	
6		
7	<i>See Exhibit A, Hemmer Dep. Vol. I at 45:15-46; Exhibit E, Claim Form.</i>	
8		
9		
10		
11	To facilitate the purchase of Tecumseh Receivables and collection of proceeds, Tecumseh opened an account with Bank of America (the "BofA Account"). Tecumseh funded the BofA Account with money from its investors.	
12		
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16	Belotz Decl., ¶ 11	
17	The receivables purchased by Tecumseh from and after October 29, 2020—4,190 receivables at a face amount of approximately \$19,846,621.37 (the "Direct Purchase Receivables")—were paid for with transfers of purchase money directly from Tecumseh's BofA Account to the respective medical providers.	
18		
19		
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22		
23	<i>See Belotz Decl., ¶ 12; see also a detailed Reconciliation prepared by Tecumseh attached hereto as Exhibit F, and Tecumseh's collaborating BofA Bank Statements from October of 2020 through and including September of 2021, attached hereto as Composite Exhibit G.</i>	
24		
25		
26		
27		
28	Tecumseh paid for the Direct	

1	Purchase Receivables directly from its BofA Account to the medical providers.	
2		
3	<i>See Belotz Decl., ¶ 13; see also Exhibit F (Reconciliation) and Composite Exhibit G.</i>	
4		
5	Tecumseh paid the Debtor its servicing fee for its work in locating and servicing the Tecumseh Receivables monthly from the BofA Account.	
6		
7	<i>See Belotz Decl., ¶ 13; see also Exhibit F (Reconciliation) and Composite Exhibit G.</i>	
8		
9		
10	As required by the Sub-Advisory Agreement, the Debtor maintained a log of the Tecumseh Receivables along with any collections on them.	
11		
12	Belotz Decl., ¶ 14.	
13		
14	Debtor made these records available to Tecumseh on a regular basis through an application known as “Case Manager.”	
15		
16	Belotz Decl. ¶ 14.	
17		
18	In addition, Tecumseh maintained its own records related to the Tecumseh Receivables.	
19		
20	Belotz Decl. ¶ 14; <i>see also</i> Exhibit F (Reconciliation) and Composite Exhibit G.	
21		
22	The Debtor likewise created a Claim Form for each Direct Purchase Receivable purchased by Tecumseh.	
23		
24	Belotz Decl., ¶ 19; <i>see also</i> Claim Form, attached hereto as Exhibit E	
25		
26	The Debtor also maintained several binders, a segregated compilation of documents, evidencing Tecumseh’s direct payments to medical providers and all	
27		
28		

1	corresponding Claim Forms for	
2	nearly all of the Direct Purchase	
3	Receivables.	
4	<i>See Exhibit I binders¹</i>	
5	Each Claim Form represented a	
6	distinct receivable, affiliated with a	
7	unique BillID number.	
8	<i>See Exhibit A, Hemmer Dep. Vol. I</i>	
9	<i>at 45:15-46:23; see also Exhibit E,</i>	
10	<i>Claim Form.</i>	
11	In October 2020, Tecumseh	
12	purchased 92 receivables with a	
13	face value of \$828,614.88 for a	
14	purchase price of \$142,862.63 and	
15	paid the Debtor a fee of \$28,572.52	
16	from its BofA Account.	
17	<i>See Exhibit F (Reconciliation) and</i>	
18	<i>Composite Exhibit G (Bank</i>	
19	<i>Statements).</i>	
20	In November 2020, Tecumseh	
21	purchased 266 receivables with a	
22	face value of \$501,921.54 for a	
23	purchase price of \$142,862.63 and	
24	paid the Debtor a fee of \$28,572.52	
25	from its BofA Account.	
26	<i>See Exhibit F (Reconciliation) and</i>	
27	<i>Composite Exhibit G (Bank</i>	
28	<i>Statements).</i>	
	In November 2020, Tecumseh	
	purchased 266 receivables with a	
	face value of \$501,921.54 for a	
	purchase price of \$142,862.63 and	
	paid the Debtor a fee of \$28,572.52	
	– all paid from its BofA Account.	
	<i>See Exhibit F (Reconciliation) and</i>	
	<i>Composite Exhibit G (Bank</i>	
	<i>Statements).</i>	
	In December 2020, Tecumseh	
	purchased 441 receivables with a	
	face value of \$1,305,197.62 for a	
	purchase price of \$283,162.07 and	

¹ The binders contain PII and HIPPA protected information. Contemporaneously with the filing of this Motion, Tecumseh will be seeking the Court's permission to submit such binders under seal of the Court.

1	paid the Debtor a fee of \$56,692.44 – all paid from its BofA Account.	
2	<i>See Exhibit F (Reconciliation) and</i>	
3	<i>Composite Exhibit G (Bank</i>	
4	<i>Statements).</i>	
5	In January 2021, Tecumseh	
6	purchased 430 receivables with a	
7	face value of \$1,500,807.25 for a	
8	purchase price of \$284,325.87 and	
9	paid the Debtor a fee of \$56,865.78	
10	– all paid from its BofA Account.	
11	<i>See Exhibit F (Reconciliation) and</i>	
12	<i>Composite Exhibit G (Bank</i>	
13	<i>Statements).</i>	
14	In February 2021, Tecumseh	
15	purchased 323 receivables with a	
16	face value of \$1,248,675.56 for a	
17	purchase price of \$321,377.94 and	
18	paid the Debtor a fee of \$64,588.45	
19	– all paid from its BofA Account.	
20	<i>See Exhibit F (Reconciliation) and</i>	
21	<i>Composite Exhibit G (Bank</i>	
22	<i>Statements).</i>	
23	In March 2021, Tecumseh	
24	purchased 412 receivables with a	
25	face value of \$2,081,787.17 for a	
26	purchase price of \$285,862.33 and	
27	paid the Debtor a fee of \$46,100.85	
28	– all paid from its BofA Account.	
	<i>See Exhibit F (Reconciliation) and</i>	
	<i>Composite Exhibit G (Bank</i>	
	<i>Statements).</i>	
	In April 2021, Tecumseh purchased	
	425 receivables with a face value of	
	\$1,278,990.10 for a purchase price	
	of \$308,721.70 and paid the Debtor	
	a fee of \$33,371.64 – all paid from	
	its BofA Account.	
	<i>See Exhibit F (Reconciliation) and</i>	
	<i>Composite Exhibit G (Bank</i>	
	<i>Statements).</i>	
	In May 2021, Tecumseh purchased	
	582 receivables with a face value of	
	\$2,647,439.26 for a purchase price	
	of \$349,515.96 and paid the Debtor	
	a fee of \$69,903.19 – all paid from	
	its BofA Account.	
	<i>See Exhibit F (Reconciliation) and</i>	

1	Composite Exhibit G (Bank Statements).	
2	In June 2021, Tecumseh purchased 533 receivables with a face value of \$4,233,654.73 for a purchase price of \$539,763.82 and paid the Debtor a fee of \$98,999.89 – all paid from its BofA Account.	
3	See Exhibit F (Reconciliation) and Composite Exhibit G (Bank Statements).	
4	In July 2021, Tecumseh purchased 245 receivables with a face value of \$2,154,768.92 for a purchase price of \$197,192.40 and paid the Debtor a fee of \$29,861.69 – all paid from its BofA Account	
5	See Exhibit F (Reconciliation) and Composite Exhibit G (Bank Statements).	
6	In August 2021, Tecumseh purchased 394 receivables with a face value of \$1,751,688.53 for a purchase price of \$199,942.76 and paid the Debtor a fee of \$31,348.54 – all paid from its BofA Account.	
7	See Exhibit F (Reconciliation) and Composite Exhibit G (Bank Statements).	
8	In September 2021, Tecumseh purchased 47 receivables with a face value of \$313,075.81 for a purchase price of \$102,827.82 – all paid from its BofA Account	
9	See Exhibit F (Reconciliation) and Composite Exhibit G (Bank Statements).	
10	The Debtor's did not possess a beneficial interest in the Direct Purchase Receivables.	
11	See Exhibit A, Hemmer Dep. Vol. II at 173:18-174:4, 174:15-175:3; see also Exhibit B, Sub-Advisory Agreement at ¶¶ 1(b), 3(a), 3(b); Exhibit F (Reconciliation), Composite Exhibit G (Bank Statements), and Exhibit I	
12	Debtor's internal records likewise denote which receivables belong to	

1	Tecumseh and which receivables belonged to the Debtor and secured HASelect's loan.	
2		
3	See Exhibit A, Hemmer Dep. Vol. II at 170:24-171:6.	
4	Tecumseh relayed to its fund administrator the "Bill ID, cost of the receivable, the overhead charge, the total cost, date paid and the type" of receivables "bought since the [time the] last report was generated."	
5		
6	See Email Correspondence attached hereto as <u>Exhibit H.</u>	
7		
8		
9		
10	Tecumseh likewise made this information available to its investors on a regular basis, posting publicly available fund reports detailing, among other things, the "date of purchase" together with the "purchase cost" of each Tecumseh Receivable denoted by its "BillID."	
11		
12	Belotz Decl. at ¶ 22; see also Reports (tecumsehhalts.com) , last visited 8.26.22.	
13		
14		
15		
16	Tecumseh reported its ownership interest and any resulting capital gains and losses to the Internal Revenue Service.	
17		
18	Belotz Decl. at ¶ 22.	
19		
20	The Debtor's bankruptcy schedules do not claim an ownership interest in Direct Purchase Receivables.	
21		
22	See Exhibit A, Hemmer Dep. Vol. II at 173:18-174:4, 174:15-175:3; see also Debtor's Schedules [Main Case, ECF No. 47].	
23		
24	All dollars collected on the Tecumseh Receivables were paid directly to Tecumseh and not to the Debtor.	
25		
26	Belotz Decl. at ¶ 23; <i>see also</i> Hemmer Dep. Vol. II at 186:18-23.	
27		
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1	Under the Sub-Advisory	
2	Agreement, the Debtor received a	
3	20% acquisition fee. The Debtor	
4	earned 10% of the acquisition fee	
5	immediately, and 10% according to	
6	a contingency schedule. The	
7	contingency schedule turned on the	
8	average investor annual rate of	
9	return; the Debtor earned up to 10%	
10	if the annual rate of return exceeded	
11	30%.	
12	See Exhibit A, Sub-Advisory	
13	Agreement, Addendum A, ¶ (a)	

Dated this 26th day of August.

Respectfully submitted,

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